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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/657,154

09/07/2000

Shun Nakamura

K6510.0055/P055

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03/20/2003

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EXAMINER

ENATSKY, AARON L

ART UNIT

PAPER NUMBER

3713

DATE MAILED: 03/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/657,154

Applicant(s)

NAKAMURA ET AL.

PR

Examiner

Aaron L Enatsky

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-23,27-29,33,37-40,44-49 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-23,27-29,33,37-40,44-49 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Examiner acknowledges receipt of amendment on 12/30/02. Claims 3-5, 24-26, 30-32, 34-36, 41-43, and 50 have been canceled. Claims 1, 2, 6-23, 27-29, 33, 37-40, 44-49, and 51 remain pending. The arguments set forth in the response are addressed herein below. Rejections based upon this prior art are contained herein below. Furthermore, the prior art rejections of record are being maintained for the reasons set forth in the response to argument section herein.

Specification

35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: indicative positions that a player can indicate and a command mark is blown out at a preset blowout position.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6-7, 22, 27-28, 33, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Lipps et al. '182 (Hereafter, Lipps).

In re claims 1 and 51, Lipps teaches of a game apparatus with a light emitter operated by a player (2:54-55), a position detector detecting the light from the bat (1:45-47 and 2:56-58) at a plurality of positions (Fig. 2, ref 47), and a control unit controlling a game is inherent through the game disclosure (3:5-13).

In re claim 6, Lipps teaches that a direct cable connection can transmit to a game machine (2:51-52).

In re claim 7, Lipps teaches that a command display issues a prescribed operation to a game player and determines correctness of player device operation (3:5-12).

In re claims 22 and 27, Lipps teaches a light emitter operated by a player (2:54-55).

In re claims 28 and 33, Lipps has a game method to be executed on the game in the form of various sports training games (1:55-57).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C.

122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 44-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki et al '968 (Hereafter Suz). Suz teaches a game machine providing a player with a plurality command marks blown out from a prescribe position, with each having different commands associated with each other (Fig. 1-9). Suz further teaches that musical rhythm is integrated with the game command marks, where the commands indicate a position a player needs to take (16:9-17:8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8, 10, 12, 16, 20, 23, 29, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps. Lipps the claimed limitations as discussed above in addition to a light emitter disposed at a prescribed position (Fig. 2) and a position detector detecting emitted light (5:22-55). Lipps does not teach a light detector operated by a player, only that light is reflected from the player object. However as Lipps teaches light emitters disposed on a player operable device or alternatively located in conjunction with a game machine. Having light detectors disposed on the player operable device would be an obvious matter of design choice because Lipps shows that emitter/detectors, regardless of location, can perform the same functionality.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to include light detectors on the player operable device.

In re claims 8, 16, and 40, Lipps teaches a command mark is blown out to a preset position through the teaching of a baseball pitch to the game player (3:5-22). A player can indicate the correct position by swinging a player operable device at the baseball where a control unit judges a correct indication through a hit. When at bat, a plurality of indicative positions is inherently provided as the swing zone of a player. While Lipps is lacking disclosure of displayed indicative positions, it would have been obvious to one of ordinary skill in the art at the time the invention was made to display the possible swing zones so a player can quickly learn the correct possible play positions.

In re claim 10, Lipps teaches that a player needs to be positioned at the relative center of the game device (Fig. 2).

In re claim 12, Lipps teaches that a light emitter is held in player's hand, which therefore is put on part of a player's body (Fig. 2).

In re claim 20, Lipps teaches the above mentioned claimed limitations, but does not teach holding a pose. However Lipps is directed to teaching a player to properly position himself for a variety of sports related games, sensing a plurality of proper elements crucial to correct game performance (1:45-55). As baseball, golf and other games rely on holding a position ready for a period of time to insure a correct movement, one would be motivated to assure correct player position over a period of time. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to include a retained pose over time detector to insure a player is in a ready position to make a correct move in a game.

In re claim 23, Lipps teaches as above, that a light emitter can be located alternatively on a player operable device or opposite a player.

In re claim 29, Lipps has a game method to be executed on the game in the form of various sports training games (1:55-57).

Claim 9, 11, 13-15, 18-19, 37-39, 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Suz.

In re claim 9 and 44, Lipps teaches the claimed limitations as discussed above, but does not teach a command mark with a command of a specific operation. Suz teaches a dance game that provides command marks with commanding a specific operation (Fig. 7). Lipps and Suz are related as game machines capturing moves of a user, wherein a game computer judges move correctness. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps and include a specific command operation with the command mark taught by Suz so that a player attempting to associate correct moves with specific pitches can be told what type of pitches were being displayed.

In re claim 11, Lipps teaches the limitations as discussed in claim 10.

In re claim 13, Lipps teaches the limitations as discussed in claim 12.

In re claim 14, Lipps teaches that a vibration detection mechanism is included in a player operable device (2:40-42). Lipps does not teach the use of a percussion musical instrument body of the player operable device, however, lacking criticality to the claimed invention, the shape is considered a design choice and Lipps teaches that the invention can be used in a variety of activities (1:55-57). Therefore, it would have been obvious to one of ordinary skill in the art at

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the time the invention was made to use a body shaped like a musical instrument for use in musical practice game.

In re claim 15, Lipps teaches the limitations as discussed in claim 14.

In re claim 18, Lipps in view of Suz teach the limitation as discussed above, but does not teach sound corresponding to indicative positions. Suz teaches providing sound corresponding to dance image data (9:56-57). Lipps and Suz are related as discussed above, where it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to include sound corresponding to image data so that during player training, a player can be alerted to a pitch style and where to place a bat in the correct indicative position providing a non-visual alternative cue to keep a player's attention on an approaching visual object.

In re claim 19, Lipps in view of Suz teach the limitation as discussed above, and additionally teaches prohibiting a specific operation. Suz teaches operation prohibition through the disclosure that position indicators are provided for a player indicating allowed positional movements (Fig. 7) and also that correct moves are judged and scored (11:1-67). As Suz teaches displaying only allowed positions, which indicates to a player that other positional moves are prohibited.

In re claim 37, Lipps in view of Suz teach the musical instrument shape device as disclosed in claim 14, and Lipps additionally teaches a hit detector (2:35-45).

In re claims 38 and 39, Lipps in view of Suz teach the claimed limitations as described in claim 9.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Suz and further in view of Clear Vision Gaming (Hereafter, CVG). Lipps in view of Suz teaches

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the claimed limitations as discussed above, but does not teach a plurality of game players operating a game that is controlled based on a level of agreement of the operation between the game players. CVG teaches a game using an alternative player operable unit that allows a plurality of players to participate in a variety of track and field events (Page 1). Through the track and field choices, CVG teaches that when a plurality of players compete, the players must agree on the operation/selection of a particular track and field event. Thus, CVG teaches a game is controlled based upon a level of agreement of a plurality of players for game operation. Lipps in view of Suz and CVG are related in that both teach capturing moves of a user using alternative player operable devices and judging player move execution. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps in view of Suz to include the option of a plurality of participating players operating a game based on a level of agreement taught by CVG so that the game machine taught by Lipps in view of Suz can incorporate a variety of games (Lipps, 1:54-56), thereby increasing player enjoyment by adding a level of competition that a machine cannot provide.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Allard et al. '193 (Hereafter, Allard). Lipps teaches the claimed limitations as discussed above in addition to sensing a player's height (1:46), but does not teach game adjustment based on a player's height. Allard teaches that a player can have the game machine indicative position adjusted (Claim 40 and 7:57-65). One would be motivated to modify Lipps as adjusting for a player's height is considered an ergonomic design choice. Well known in art dealing with human interactions, adjustment to an individual's physical attributes is necessary to accommodate a system directed at a general population. Therefore, it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to modify Lipps to adjust indicative positions for player height to insure that a range of player's can have equal advantage, thus increasing amount of available players.

Response to Arguments

Applicant's arguments filed on 12/30/02 have been fully considered, but are not considered persuasive. Applicant has submitted that Lipps no longer anticipates nor can be deemed obvious in view of Applicant's invention through the requirement of detecting spatial positions through a plurality of positions as it moves through a defined spatial area. Examiner contends that Lipps fully provided for spatial position detection by disclosing, "the invention may detect more information about the swing, such as speed, height, upward or downward angle, etc. to perform a better simulation of game play" (1:45-48). Detecting spatial positioning is inherent when detecting angular motion and cannot be provided through detecting only speed or timing of a bat swing as Applicant suggests.

Applicant also argues that Suz does not teach a device operated by a game player. Examiner refers Applicant to Fig. 2 and 7. Fig. 2 shows a device that is clearly operated by a player, where device operation is instructed to the player by the game device (Fig. 7). Suz thus teaches the limitations in question.

Applicant also argues that Examiner lacks motivation to combine Lipps in view of Suz. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching,

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suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Lipps teaches a game that requires complex hand-eye coordination that often requires a notable amount of practice and training to master. Providing a function in an electronic game to teach a player how to better utilize the equipment is generally accepted by one of ordinary skill. Thus one would be motivated to combine Lipps in view of Suz to allow a player to train by way of example, to make to correct moves.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kosugi et al. '756 teaches spatial positioning using player operable devices with both hands and feet.

Okano et al. '861 teaches spatial positioning using player operable devices. Game system instructs players on what moves to make.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

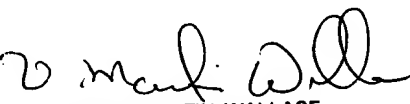
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron L Enatsky whose telephone number is 703-305-3525. The examiner can normally be reached on 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 703-308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Aaron Enatsky

March 10, 2003


VALENCIA MARTIN-WALLACE
SUPERVISORY PATENT EXAMINER
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